

DRAFT – May 13, 2014

## **ROLL OUT PLAN FOR**

### *Delay in Decision on Approvability of the Oregon Coastal Nonpoint Pollution Program*

**Action:** *NOAA and EPA will not issue a final finding regarding whether or not Oregon has submitted a fully approvable Coastal Nonpoint Program by the May 15 Settlement Agreement deadline*

**Date:** *May 15, 2014*

#### **Roll out lead:**

Allison Castellan, NOS/OCRM, (301) 563-1125 (NOAA/NOS lead for action)

Don Waye, EPA/OWOW (202) 566-1170

Jayne Carlin (tentative), EPA R10/OWW (206) 553-8512

#### **NOAA Roll out team:**

- National Ocean Service:
  - Allison Castellan, NOS/OCRM (301) 563-1125 (lead for action)
  - Joelle Gore, NOS/OCRM (301) 563-1177
  - Lindsey C. Williams, NOS Policy/Leg 301-713-3070 x 115
- National Marine Fisheries Service
  - Kim Kratz, NMFS/WCR/WCRO/AOD (503) 231-2155
- NOAA Communications/ Public Affairs
  - @NOS - Ben Sherman (lead), Keeley Belva, (back-up), 301-713-3066
  - @NMFS – Katherine Cheney, 503-231-6730
- NOAA Office of Legislative and Intergovernmental Affairs
  - Michael Dukes (202) 482-5597 (NOS portfolio)
  - Linda Belton (202)-482-5447 (Intergovernmental)
  - Christina Durham (202) 482-5935 (NMFS portfolio)
- NOAA PCO (NOS) – Adria Schneck-Scott (202) 482-1281
- NOAA General Counsel
  - Jeff Dillen, (301) 713-7382

#### **EPA Rollout team**

- OWOW
  - Don Waye, EPA/OWOW (202) 566-1170
  - Jayne Carlin (tentative), EPA R10/OWW (206) 553-8512
- EPA Communications/ Public Affairs
  - Marianne Holsman 206.553.1237 (EPA NW)
- EPA Office of Legislative and Intergovernmental Affairs
  - Sven-Erik Kaiser, Kaiser.Sven-Erik@epa.gov--202-566-2753
  - Greg Spraul, Spraul.Greg@epa.gov--202-564-0255

**NOAA Spokespeople:**

- Joelle Gore, Acting Division Chief, Coastal Programs Division, NOS/OCRM

**EPA Spokespeople:**

- Lynda Hall, Chief, Nonpoint Source Control Branch, EPA HQ
- Christine Psyk, Associate Director, Office of Water and Watersheds, EPA R10

**Key Messages:**

- Preventing and reducing coastal nonpoint source pollution, as the Coastal Nonpoint Program is designed to do, is very important to NOAA and EPA.
- NOAA and EPA have received extensive public input on the December 2013 proposed decision that found Oregon had failed to submit an approvable program coastal nonpoint program.
- In order to thoroughly review, consider and respond to the comments received, the agencies will need additional time beyond the May 15, 2014, deadline in a 2010 settlement agreement with the Northwest Environmental Advocates, before releasing a final decision regarding whether or not the state has submitted an approvable program.
- NOAA and EPA have entered into a 30-day informal dispute resolution with Northwest Environmental Advocates to see if it is possible to negotiate an extension to the settlement deadline.

*See background for additional messages and Q&A.*

**Audiences:** Interested Congressional offices, Oregon state gov't, some news media.

**Plan Summary and Schedule:**

- April/May: NOS inclusion in the Upcoming Decisions Report
- May 12: Update/Heads Up at NOAA Leadership tag-up
- May 15: Informal heads up to interested Congressional staff (email by Dukes)
- May 15: Informal heads up to state (DLCD and DEQ) (Pysk call DEQ; Gore/Castellan/Wall call DLCD)
- May 15+: Public Affairs prepared to respond to
- TBD Fall 2014: Rollout plan developed for final decision.

**Materials:**

- Congressional Email Heads Up (Castellan/Williams/Dukes)

- Media Statement (Castellan/Sherman)
- Q&A
- BACKGROUND Attached: Dec. Proposed Decision Rollout Plan (inc. messages and Q&A)

**Questions and Answers (supplement to Key Messages):**

(See December proposed decision rollout plan for additional Q&A)

**QUESTION:** Why aren't the agencies announcing their final decision?

**ANSWER:** The public comment period ended March 20, 2014. NOAA and EPA received significant public comments and need additional time to carefully review the public input received during the comment period. The agencies are considering the input, will revise their proposed decision rationale, as needed to address public comment, and prepare responses to the comments received.

**QUESTION:** When will the decision be announced?

**ANSWER:** At this time, the agencies feel we can reach a final decision by this Fall/Winter.

**QUESTION:** How many comments were received?

**ANSWER:** The agencies received 85 comments on the proposed decision. Many comments are substantial and include lengthy attachments for our consideration. The state also provided an 80+ page submittal.

**QUESTION:** Does this mean NOAA and EPA are going to be taken to court?

**ANSWER:** The plaintiff from the 2009 case (Northwest Environmental Advocates – NWEA) can reinitiate its suit against NOAA and EPA after June 15, 2014, for failing to meet May 15, 2014, settlement deadline. NOAA and EPA are currently in a 30-day informal dispute resolution period with NWEA to see if all parties can agree on an extension to the May 15, 2014, deadline. The plaintiff's original suit claimed that NOAA and EPA had failed to find that Oregon had failed to submit an approvable program and therefore, failed to withhold funding under Section 306 of the Coastal Zone Management Act and Section 319 of the Clean Water Act, as required by the statute.

**QUESTION:** What happens to Oregon's program while you decide?

**ANSWER:** Oregon's program will not be impacted until NOAA and EPA issue a final decision. If the agencies disapprove the program (as proposed in December), the state will face penalties.

**QUESTION:** What are the consequences if NOAA and EPA officially disapprove Oregon's Coastal Nonpoint Program?

**ANSWER:** If NOAA and EPA disapprove a state's coastal nonpoint program, CZARA requires NOAA to withhold a portion of the state's Coastal Zone Management Act Section 306 funding that supports implementation of the state's coastal management program. CZARA also requires EPA to withhold a portion of the state's Clean Water Act Section 319 funding that supports implementation of the state's nonpoint source management program. *[Only if asked about specific funding amounts to be withheld: The total amount of withheld funds could range from \$900,000 to approximately \$1.2 million, depending on appropriations levels and other factors.]*

**QUESTION:** List likely question

**ANSWER:** Recommended answer.



**Draft Congressional Heads Up**

*To be sent to same recipients as November heads up (per OLIA: Oregon Congressional Delegation, interested Committee staff)*

As you may recall, NOAA and EPA issued a Federal Register Notice (FRN) in December announcing the intent to disapprove Oregon's Coastal Nonpoint Program. The public comment period closed on March 20, 2014 and the agencies are currently reviewing and preparing responses to the comments received. Preventing and reducing coastal nonpoint source pollution, as the Coastal Nonpoint Program is designed to do, is very important to NOAA and EPA. NOAA and EPA will not issue a final decision on the program by May 15 as previously stated. The agencies will take additional time to carefully consider all the input received.

Please contact Michael Dukes at Michael.Dukes@noaa.gov and/or (202) 482-5597 for additional information and/or to request a briefing.

***Additional Background***

In 1990, Congress established the Coastal Nonpoint Pollution Control Program (Coastal Nonpoint Program) under Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA) to encourage better coordination between state coastal zone managers and water quality experts to reduce polluted runoff in the coastal zone.

Coastal states that participate in the National Coastal Zone Management Program are required to develop a Coastal Nonpoint Pollution Control Program (or Coastal Nonpoint Program) that describes the programs and enforceable mechanisms they will use to implement a suite of management measures to prevent and control polluted runoff in coastal waters. The management measures to prevent and control pollution that states are expected to adopt are described in EPA and NOAA guidance.

**DRAFT MEDIA STATEMENT**

*All media inquiries should be directed to X.*

Preventing and reducing coastal nonpoint source pollution, as the Coastal Nonpoint Program is designed to do, is very important to NOAA and EPA.

NOAA and EPA issued a Federal Register Notice (FRN) in December announcing the intent to disapprove Oregon's Coastal Nonpoint Program.

The public comment period closed on March 20, 2014 and the agencies are currently reviewing and preparing responses to the comments received.

NOAA and EPA will not issue a final decision on the program by May 15. The agencies will take additional time to carefully consider all the input received.

DRAFT – May 13, 2014

## ROLL OUT PLAN FOR

### *Delay in Decision on Approvability of the Oregon Coastal Nonpoint Pollution Program*

**Action:** *NOAA and EPA will not issue a final finding regarding whether or not Oregon has submitted a fully approvable Coastal Nonpoint Program decision on the approvability of the Oregon Program by the May 15 Settlement Agreement deadline*

**Comment [AC1]:** This wording tracks statutory language of what our "action" is.

**Date:** *May 15, 2014*

**Comment [LCW2]:** 15<sup>th</sup> or rec 14<sup>th</sup>?

**Comment [AC3]:** 15<sup>th</sup> is correct.

#### **Roll out lead:**

Allison Castellán, NOS/OCRM, (301) 563-1125 (NOAA/NOS lead for action)  
Don Waye, EPA/OWOW (202) 566-1170  
Jayne Carlin (tentative), EPA R10/OWW (206) 553-8512

#### **NOAA Roll out team:**

- National Ocean Service:
  - Allison Castellán, NOS/OCRM (301) 563-1125 (lead for action)
  - Joelle Gore, NOS/OCRM (301) 563-1177
  - Lindsey C. Williams, NOS Policy/Leg 301-713-3070 x 115
- National Marine Fisheries Service
  - Kim Kratz, NMFS/WCR/WCRO/AOD (503) 231-2155
- NOAA Communications/ Public Affairs
  - @NOS - Ben Sherman (lead), Keeley Belva, (back-up), 301-713-3066
  - @NMFS – Katherine Cheney, 503-231-6730
- NOAA Office of Legislative and Intergovernmental Affairs
  - Michael Dukes (202) 482-5597 (NOS portfolio)
  - Linda Belton (202)-482-5447 (Intergovernmental)
  - Christina Durham (202) 482-5935 (NMFS portfolio)
- NOAA PCO (NOS) – Adria Schneck-Scott (202) 482-1281
- NOAA General Counsel
  - Jeff Dillen, (301) 713-7382

**Comment [LCW4]:** Lindsey will get new name (portfolio change)

#### **EPA Rollout team**

- OWOW
  - Don Waye, EPA/OWOW (202) 566-1170
  - Jayne Carlin (tentative), EPA R10/OWW (206) 553-8512
- EPA Communications/ Public Affairs
  - Marianne Holsman 206.553.1237 (EPA NW)
- EPA Office of Legislative and Intergovernmental Affairs
  - Sven-Erik Kaiser, Kaiser.Sven-Erik@epa.gov--202-566-2753



- o Greg Spraul, Spraul.Greg@epa.gov--202-564-0255

#### NOAA Spokespeople:

- Joelle Gore, Acting Division Chief, Coastal Programs Division, NOS/OCRM
- Margaret Davidson, Acting Director, Office of Ocean and Coastal Resource Management, NOS
- Will Stelle, Regional Administrator, NMFS Northwest Region

**Comment [LCW5]:** Is he looped in on the delay? If not, should we take him off the spokespeople?

**Comment [AC6]:** Will is looped in but he doesn't need to be spokesperson. I would just have Joelle serve as spokesperson for NOAA.

#### EPA Spokespeople:

- Lynda Hall, Chief, Nonpoint Source Control Branch, EPA HQ
- Christine Psyk, Associate Director, Office of Water and Watersheds, EPA R10
- Dennis McLerran, Regional Administrator, EPA R10

**Comment [LCW7]:** This is the list from the Dec. rollout. Same for this? Shortened?

#### Key Messages:

- Preventing and reducing coastal nonpoint source pollution, as the Coastal Nonpoint Program is designed to do, is very important to NOAA and EPA.
- NOAA and EPA have received extensive public input on the December 2013 proposed decision that found Oregon had failed to submit an approvable program and disapprove the Oregon Coastal Nonpoint Program.

**Comment [LCW8]:** Outline the 2 – 4 key messages NOAA would like to convey in the roll out of this action and highlight any controversies here. These messages may include information on what are we trying to accomplish and why? What is the rationale for our decision/ approach? What are the next steps or what can people expect next? How can people follow up to ensure their voice is heard?

- In order to thoroughly review, consider and respond to the comments received, the agencies will need additional time beyond the May 15, 2014, deadline in a 2010 settlement agreement with the Northwest Environmental Advocates, before releasing a final decision regarding the whether or not the state has submitted an approvable program.

- NOAA and EPA have entered into a 30-day informal dispute resolution with Northwest Environmental Advocates to see if it is possible to negotiate an extension to the settlement deadline. not release a final decision by May 15.

**Formatted:** Font: +Body (Calibri)

**Formatted:** Indent: Left: 0.5", Don't add space between paragraphs of the same style, No bullets or numbering

**Comment [LCW9]:** Thoughts on this? Too basic? What can we say legally?

**Formatted:** List Paragraph, Indent: Left: 0", Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

See background for additional messages and Q&A.

**Audiences:** Interested Congressional offices, Oregon state gov't, some news media.

#### Plan Summary and Schedule:

- April/May: NOS inclusion in the Upcoming Decisions Report
- May 12: Update/Heads Up at NOAA Leadership tag-up
- May 15: Informal heads up to interested Congressional staff (email by Dukes)
- May 15: Informal heads up to state (DLCD and DEQ) (Pyske call DEQ; Gore/Castellan/Wall call DLCD)

**Comment [LCW10]:** 14<sup>th</sup> or 15<sup>th</sup>?

**Comment [LCW11]:** Anyone else need to get the heads up?

**Formatted:** Font: Not Italic

**Formatted:** Font: Not Italic

**Formatted:** Font: Not Italic

*For Official Use Only-Pre-decisional Deliberative Information-Not for Public Release*

- May 15+: Public Affairs prepared to respond to
- TBD Fall 2014: Rollout plan developed for final decision.

**Materials:**

- Congressional Email Heads Up (Castellan/Williams/Dukes)
- Media Statement (Castellan/Sherman)
- Q&A
- BACKGROUND Attached: Dec. Proposed Decision Rollout Plan (inc. messages and Q&A)

**Comment [LCW12]:** Anything else suggested (ie 3 things background memo, etc?)

**Comment [LCW13]:** Ben, did I hear you correctly regarding needing a statement or did you just mean to be prepared with the Q&A?

**Questions and Answers (supplement to Key Messages):**

(See December proposed decision rollout plan for additional Q&A)

**Comment [LCW14]:** These are a quick start, please revise/add as you see fit.

If folks would like all of the Q&A from the Dec plan moved here, let me know.

**QUESTION:** Why aren't the agencies announcing their final decision?

**ANSWER:** The public comment period ended March 20, 2014. NOAA and EPA received significant public comments and need additional time to carefully review the public input received during the comment period. The agencies are considering the input, will revise their proposed decision rationale, as needed to address public comment, and prepare ing responses to the input comments received.

**QUESTION:** When will the decision be announced?

**ANSWER:** At this time, the agencies feel we can reach a final decision by this Fall/Winter in the fall of 2014.

**Comment [LCW15]:** We need to at least have something to say – please revise if you'd like it to be less specific.

**Comment [AC16]:** As unspecific as possible.

**QUESTION:** How many comments were received?

**ANSWER:** The agencies received 85 comments on the proposed decision. Many comments are substantial and include lengthy attachments for our consideration. The state also provided an 80+ page submittal.

**QUESTION:** Does this mean NOAA and EPA are going to be taken to court?

**ANSWER:** The plaintiff from the 2009 case (Northwest Environmental Advocates – NWEA) can reinitiate its suit against NOAA and EPA after June 15, 2014, for failing to meet May 15, 2014, settlement deadline. NOAA and EPA are currently in a 30-day informal dispute resolution period with NWEA to see if all parties can agree on an extension to the May 15, 2014, deadline. NWEA could bring in FOIA and ESA claim as well. The plaintiff's original suit claimed that NOAA and EPA had failed to find that Oregon had failed to submit an approvable program and therefore, failed to withhold funding under Section 306 of the Coastal Zone Management Act and Section 319 of the Clean Water Act, as required by the statute.

**Comment [AC17]:** This may be getting into the weeds for our target audience.

**QUESTION:** What happens to Oregon's program while you decide?

**ANSWER:** Oregon's program will not be impacted until NOAA and EPA issue a final decision. If the agencies disapprove the program (as proposed in December), the state will face penalties.

**QUESTION:** What are the consequences if NOAA and EPA officially disapprove Oregon's Coastal Nonpoint Program?

**ANSWER:** If NOAA and EPA disapprove a state's coastal nonpoint program, CZARA requires NOAA to withhold a portion of the state's Coastal Zone Management Act Section 306 funding that supports implementation of the state's coastal management program. CZARA also requires EPA to withhold a portion of the state's Clean Water Act Section 319 funding that supports implementation of the state's nonpoint source management program. *[Only if asked about specific funding amounts to be withheld: The total amount of withheld funds could range from \$900,000 to approximately \$1.2 million, depending on appropriations levels and other factors.]*

**QUESTION:** List likely question

*For Official Use Only-Pre-decisional Deliberative Information-Not for Public Release*

**ANSWER:** Recommended answer.

**Comment [LCW18]:** Other questions?

**Comment [AC19]:** I think these cover it well.

*For Official Use Only-Pre-decisional Deliberative Information-Not for Public Release*

**Draft Congressional Heads Up**

*To be sent to same recipients as November heads up (per OLIA: Oregon Congressional Delegation, interested Committee staff)*

As you may recall, NOAA and EPA issued a Federal Register Notice (FRN) in December announcing the intent to disapprove Oregon's Coastal Nonpoint Program. The public comment period closed on March 20, 2014 and the agencies are currently reviewing and preparing responses to the comments received. Preventing and reducing coastal nonpoint source pollution, as the Coastal Nonpoint Program is designed to do, is very important to NOAA and EPA. NOAA and EPA will not issue a final decision on the program by May 15 as previously stated. The agencies will take additional time to carefully consider all the input received.

Please contact Michael Dukes at Michael.Dukes@noaa.gov and/or (202) 482-5597 for additional information and/or to request a briefing.

***Additional Background***

In 1990, Congress established the Coastal Nonpoint Pollution Control Program (Coastal Nonpoint Program) under Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA) to encourage better coordination between state coastal zone managers and water quality experts to reduce polluted runoff in the coastal zone.

Coastal states that participate in the National Coastal Zone Management Program are required to develop a Coastal Nonpoint Pollution Control Program (or Coastal Nonpoint Program) that describes the programs and enforceable mechanisms they will use to implement a suite of management measures to prevent and control polluted runoff in coastal waters. The management measures to prevent and control pollution that states are expected to adopt are described in EPA and NOAA guidance.

**Comment [LCW20]:** Thoughts on including a bullet about the lawsuit or just want to have staff ask? (I think the OR folks are well aware, the other committee staff might not be).

**DRAFT MEDIA STATEMENT**

*All media inquiries should be directed to X.*

**Comment [LCW21]:** Ben – I defer to you on if meant a written statement was needed or just talking points. This is just a quick start based on the Congressional note.

**Comment [LCW22]:** Assume Ben and the EPA public affairs person or just Ben?

Preventing and reducing coastal nonpoint source pollution, as the Coastal Nonpoint Program is designed to do, is very important to NOAA and EPA.

NOAA and EPA issued a Federal Register Notice (FRN) in December announcing the intent to disapprove Oregon's Coastal Nonpoint Program.

The public comment period closed on March 20, 2014 and the agencies are currently reviewing and preparing responses to the comments received.

NOAA and EPA will not issue a final decision on the program by May 15. The agencies will take additional time to carefully consider all the input received.

**Comment [LCW23]:** Mention lawsuit somewhere?